

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, } NO. 2:09-CR-152-LRS-1
Plaintiff, }
v. }
ANDRES REYES ZAPATA, }
Defendant. }
} **ORDER DENYING
PETITION TO REDUCE
SENTENCE**

BEFORE THE COURT is Defendant's *pro se* Petition To Reduce Sentence. (ECF No. 97).

Defendant was sentenced on two counts: Count 1 for Possession With Intent To Distribute 50 Grams Or More Of A Mixture Or Substance Containing Methamphetamine, 21 U.S.C. §841(a)(1); Count 2 for Possession Of A Firearm In Furtherance Of A Drug Trafficking Crime, 18 U.S.C. §924(c). Both counts of conviction carried a statutory mandatory minimum of 60 months imprisonment. Defendant was sentenced to 60 months on each count and as required by 18 U.S.C. §924(c)(1)(D)(ii), the 60 months sentence on the firearm charge was ordered to run consecutively to the 60 months sentence on the drug charge.

The court did not impose an increased sentence on the Defendant under the residual clause of the Armed Career Criminal Act (ACCA) and therefore, *Johnson v. United States*, ____ U.S. ____, 135 S.Ct. 2551 (2015), is of no

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1 avail to Defendant. A review of the pre-sentence report confirms that
2 Defendant also did not receive any guideline enhancements to the Base Offense
3 Level regarding his conviction on the drug charge. This is borne out by the fact
4 that Defendant received the **statutory mandatory minimum sentence** for that
5 conviction. Defendant did not receive an enhancement for possession of a
6 firearm. Instead, he was convicted on a separate and additional charge of
7 possession of a firearm in furtherance of a drug trafficking crime which, **by**
8 **statute**, required a consecutive term of imprisonment of **no less** than 60 months.
9 18 U.S.C. §924(c)(1)(A)(i).

10 Defendant's Petition To Reduce Sentence (ECF No. 97) is **DENIED**.

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter
12 this order and provide copy to Defendant.

13 **DATED** this 8th day of July, 2016.

14 *s/Lonny R. Sukko*

15 _____
16 LONNY R. SUKO
Senior United States District Judge

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